

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MANUBHAI RADIABHAI PATEL

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Appearance:

MR MI HAVA for Petitioners

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/11/1999

#### ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by the State of Gujarat and others praying for quashing of the judgement and order dated 30.4.1986 passed by the Gujarat Civil Service Tribunal annexure-F to the writ petition.

Shri Uday Bhatt for Mr. M.I. Hava has been heard.  
None appears on behalf of the respondent.

The brief facts giving rise to this petition are as under:-

The respondent was serving as Beat Guard under Deputy Conservator of Forests during 1974 to 1976. Several villages were under his beat. For dereliction and felling of trees illegally from the forest range, charge sheet was served on the respondent on 5.2.1976 by the Deputy Conservator of Forests. In brief the charges were that 637 valuable trees were illegally cut in the beat area of the respondents but he reported cutting of 134 trees. In this way he failed in his duty and did not make proper enquiries about illegal cutting of trees. The Inquiry Officer in his report dated 5.1.1977, found the respondent guilty and held that the charges were proved that he was negligent in performing his duties. The respondent was served with show cause notice. He submitted his reply on 24.2.1977 and ultimately vide order dated 4/6-8-1978 passed by the Deputy Conservator of Forest, the respondent was removed from services. Feeling aggrieved the respondent filed appeal before the Conservator of Forests which was dismissed on 27.10.1980. Still feeling aggrieved he filed appeal before the Gujarat Civil Services Tribunal. The appeal of the respondent was allowed by the Tribunal, hence this writ petition.

Shri Uday Bhatt has taken me through the judgement of the Gujarat Services Tribunal which is impugned in this writ petition. His contention has been that since Gujarat Civil Services Tribunal has substituted its own finding over the findings of the two authorities below, it was an illegal exercise, hence it deserves to be quashed. His further contention has been that the order of the appellate authority could not be substituted by the views of the Tribunal and since this exercise was done the impugned order becomes illegal. He also pointed out from the judgement of the Tribunal that in case it was found that the charges were proved and there was some lacuna or non-application of mind by the two authorities below, the proper course for the Tribunal was to remand the matter either to the appellate authority or to the appointing authority for fresh consideration of the matter and not that the order of the first authority duly confirmed by the appellate authority could be set aside. He also contended that in case the Tribunal was of the opinion that quantum of punishment was not commensurate with the nature of the guilt established, this matter also could have been remanded to the lower authorities for fresh consideration.

After giving anxious consideration to the judgement of the Tribunal and contention raised by Shri Bhatt and further considering the fact that the order of the Tribunal was passed on 13.4.1986, it would not be just and expedient now to quash the impugned order and remand the matter for fresh consideration by the authorities below. The Tribunal has observed in its judgement that the order of dismissal is based on perverse finding and is otherwise arbitrary and therefore unconstitutional. From these findings which have been quoted in the last page of the judgement of the Tribunal it appears that there is clear finding that the finding of the lower authorities was perverse and was arbitrary so also unconstitutional. It is not a case, therefore, where the Tribunal has taken a different view from the evidence on record. Consequently, it cannot be said that the Tribunal has substituted its own views after reappreciating evidence.

On the point of quantum of punishment the Tribunal has recorded categorical finding that the punishment was disproportionate to the guilt established against the respondent. Moreover, if the finding of guilt was found by the Tribunal to be perverse, unconstitutional and arbitrary, there was no occasion for giving detailed reasons for observing that the quantum of punishment was disproportionate to the guilt established.

After considering the judgement of the Tribunal, I do not find that there is any error apparent on the face of the record or on the face of the judgement under challenge. Therefore, it is neither just nor expedient to interfere with the order of the Tribunal after more than 13 years.

For the reasons stated above, the writ petition is dismissed. No order as to costs.

(D.C. SRIVASTAVA, J)

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